IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 299 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MULTANSINGH VIRUSINGH

Versus

JOITARAM SHIVDAS PATEL

Appearance:

MR FB BRAHMBHATT for Petitioner

MR IQBAL M MALIK for Respondent No. 1

MR SP DAVE APP for Respondent No. 4

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 25/04/2001

ORAL JUDGEMENT

1. The present revision application has been filed by the present petitioner abovenamed under Section 397 of the Code of Criminal Procedure, 1973 (for short "Code"),

who was the informant before the learned Metropolitan Magistrate, Court no. 13 at Ahmedabad in Criminal Case No. 1475/90 for the offences punishable under Sections 406, 420 and 114 of the Indian Penal Code, wherein, the learned Magistrate acquitted the contesting respondents no. 1, 2 and 3 from the said offences by judgement and acquittal order dated 12.4.1999.

2. Feeling aggrieved by the said judgement and acquittal order recorded by the learned Magistrate, Court no. 13, the present petitioner has preferred this Criminal Revision Application before this Court. It has been mainly contended in the application that the learned Magistrate has committed serious illegality in appreciation of the evidence before him. That the learned Magistrate has erred in holding that the agreement to sell was in custody of the present petitioner and yet he did not produce the same. That the learned Magistrate has committed illegality in not connecting contesting respondent nos. 1 , 2 and 3 and that on the whole, the judgment and acquittal order recorded by the learned Magistrate are illegal, erroneous and deserve to be set aside. It is therefore, prayed that the present petition be allowed and the judgement and acquittal order be set aside and the matter may be remanded back to the trial Court with a direction for retrial or fresh appreciation of evidence by the trial Court.

3. On receiving the revision application, arguments have been heard. Mr. I.M Malek, learned advocate appears for the respondent Nos. 1 to 3 and Mr. S.P. Dave, learned APP appears for the State of Gujarat, respondent no. 4. They have all argued the matter at length in support of their rival contentions. It may be stated that the learned APP has supported the judgment of the trial Court and same way, Mr. Malek, learned advocate for the respondent nos. 1 to 3 has also supported the judgment of the trial Court.

4. The case of the original informant, who is present petitioner before this Court is that he agreed to enter into an agreement of sale and purchase of an immovable property in a sum of Rs. 3 lacs under an agreement to sale dated 31st July, 1989. That out of the said amount, an amount of Rs. 30,000/- was paid at the time when the agreement was entered into. Thereafter, a registered saledeed was brought into force and it was executed by the present petitioner. The petitioner contended before the trial Court that the remaining amount was not paid by the contesting respondent at the

time of execution of the registered saledeed. On the said set of facts, the aforesaid FIR was lodged and after conclusion of the investigation in the said M. Case No. 13/90 of Dariapur Police Station, chargesheet was filed and it was registered as Crime Register No. 13/90. The learned Magistrate provided the respondents with copies of the police papers. Charge was framed and after recording the evidence, further statement of contesting respondents were recorded under Section 313 of the Code in the said case. After hearing the arguments, the learned Magistrate found that no offences was made out and therefore, he passed the judgement and order acquitting the contesting respondents from the aforesaid charge.

5. Feeling aggrieved by the said judgement and acquittal order, the present revision application has been filed by the present petitioner.

6. During the course of his arguments, learned advocate for the petitioner has argued at length that the learned Magistrate has committed an error in observing that the original agreement of sale dated 31st July, 1989 was in possession of the petitioner and yet he did not produce the same. That in fact that document in original was with respondent and they did not in fact produce it on record.

7. Now, if the respondents did not produce the same in original then the petitioner had opportunity to get the same produced and if that was not done then the secondary evidence was permissible and therefore, this cannot be said to be a procedural mistake committed by the Court and unless the procedural defect has been made out, there is not case for remand the matter.

8. It has also been argued on behalf of the petitioner that there was sufficient material before the trial Court to hold that the contesting respondents are guilty for the offences punishable under Sections 406 and 420 of the Indian Penal Code. That the trial Court did not properly appreciate the evidence before it and therefore, the judgement and order of the trial Court are illegal.

9. It would be necessary to appreciate the provision made in Subsection 3 of Section 401 of the said Code. This provision can be referred for ready reference as follows :-

" Nothing in this section shall be deemed to authorise a High Court to convert a finding of acquittal into one of conviction. "

10. On bare perusal of the aforesaid provision, it become clear that this Court cannot record a finding of conviction when the Trial Court has already recorded a finding of acquittal.

11. Once the aforesaid provision is taken into consideration, it goes without saying that in Criminal Revision Application, a judgement of acquittal cannot be converted into a judgement of conviction. In other words, when the respondents herein have been acquitted from the aforesaid offences by the learned Magistrate, then, this Court can not convict them for the said offenses.

12. Learned advocate for the petitioner has also argued that the matter may be remanded since the appreciation is not proper. It is not technically possible for this Court to remand the matter to the Court concerned with a direction to appreciate the evidence before it properly.

13. The order of remand may be good order provided there are certain exceptional circumstances. If a particular evidence has been totally overlooked then the matter may be remanded. If an inadmissible evidence has been admitted and considered without application of mind then the said aspect may be taken into consideration. If some witnesses are dropped and not examined or that the witnesses have not been permitted to have been examined by the Court and if injustice is done, then also the matter can be remanded back to the court.

14. In the present case, no witnesses have been dropped. There is no case regarding non availability of evidence. It is not the case of the petitioner that prosecution wanted to examine particular witnesses and the prosecution had closed down the case and disposed of the same. In that view of the matter, I am of the view that this is not a case in which, matter can be remanded for the purpose for which it is sought to be remanded. Therefore, I am of the opinion that even if, appreciation is not proper then also, a criminal case cannot be remanded to the trail Court for proper appreciation or for legal appreciation. This can be done if, there is no appreciation of a particular evidence at all.

15. In the present case, it is found that whatever material produced before the trail Court has been assessed and appreciated. It is not the case of the petitioner that a particular evidence has been overlooked. Therefore, I am of the opinion that this case before us cannot be remanded back for reappreciation of evidence or for retrial also.

16. In above view of the matter, it is clear that the trial Court has appreciated the evidence and therefore, there is no reason to remand the matter back to the trail Court for appropriate appreciation or reappreciation. In that view of the matter, nothing is required to be done and consequently, the present revision application would not be remanded, in view of the provisions made in Subsection 3 of the Section 401 of the Code.

17. The result is that the present revision application is without any merit and therefore, it deserve to be dismissed.

18. Learned advocate for the petitioner has submitted that entire trial remains in the hand of the prosecutor and even after, the conclusion of the trial, the petitioner is without any remedy, since the petitioner cannot file acquittal appeal. Now, this is a provision of law and this Court is required to follow the provisions of law. To create a law or to change a law is not a function of this Court and therefore, in view of the existing position of law, I am of the view that it is not possible to do anything in the matter and consequently, revision is required to be dismissed.

19. In the facts and circumstances of the case, this Criminal Revision Application is ordered to be dismissed.

(D.P. Buch, J.)

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